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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN GOUGH,

Defendant and Appellant.

A124979

(San Francisco County
Super. Ct. No 2390483)

Appellant was convicted upon a plea of guilty to possession of a firearm by a convicted felon (Pen. Code, § 12021, subd. (a)(1)),¹ as charged in an information filed on February 5, 2009. Pursuant to a negotiated disposition, appellant received a fixed prison sentence of the low term of 16 months in state prison, and the prosecution moved to dismiss the remaining counts charging him with: carrying a firearm as a convicted felon (§ 12020, subd. (a)(1)); illegally possessing ammunition as a convicted felon (§ 12316, subd. (b)(1)); possession of stolen checks (§ 496, subd. (a)); and misdemeanor violations of possession of fraudulent documents (§ 476), giving false information to a police officer (§ 148.9, subd. (a)), driving without a valid driver's license (Veh. Code, § 12500, subd. (a)), and possession of concentrated cannabis (Health & Saf. Code, § 11357, subd. (a)). Also dismissed was an allegation, pursuant to section 667.5, subdivision (b), that appellant served a prior prison term for two felony convictions.

¹ All further code references are to the Penal Code unless otherwise indicated.

Appellant appeals denial of his pre-plea motion to suppress the evidence against him. Assigned counsel has submitted a *Wende*² brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that appellant has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

BACKGROUND

On October 20, 2008, at about 1:30 a.m., appellant was stopped by officers of the San Francisco Police Department who observed him driving erratically, almost striking a parked car.³ There were no front or rear license plates on appellant's vehicle. He initially falsely identified himself to the officers, giving a different name and date of birth. When confronted with the fact that he did not fit the description obtained by the officers in a computer records check for the individual he claimed to be, appellant disclosed his true identity, admitted that he did not have a driver's license, and told the officers that he was on parole.

Appellant's parole status was confirmed by the officers through a further computer records check, which also revealed that appellant was subject to a search condition. The officers then decided to conduct a parole search of appellant's residence at 16-A Seymour Street, located about six blocks from where appellant was stopped. In a back bedroom of the residence the officers found indicia in appellant's name, including a photo identification card. The officers also found suspected marijuana, digital scales, 11 shotgun shells, identification cards in other names, and checks, some of which matched the names on the other identification cards. It was determined that a person whose name was on one of the identification cards and on certain checks, Charles Jones,

² *People v. Wende* (1979) 25 Cal.3d 436.

³ The evidentiary facts are taken from the preliminary hearing testimony.

had been the victim of a theft. A loaded 12 gauge sawed-off shotgun was found under a couch in the living room of the residence.

The defense presented the testimony of Tanya Chandler, an acquaintance of appellant, who testified that she was following appellant in her own vehicle at the time he was stopped by police. She denied that appellant was driving erratically or that he almost hit a parked car.

Appellant moved to suppress the evidence seized from his residence. His counsel sought to cross-examine the arresting officers about their reasons for conducting a parole search, arguing that a parole search conducted for arbitrary or capricious reasons, or for purposes of harassment was invalid. The magistrate initially sustained relevance objections to these questions, but allowed counsel to make a written offer of proof, with the specific questions he proposed to ask. He submitted 11 questions, and the court sustained prosecution objection to four of these, permitting the remainder to be asked. The four questions to which relevance objections were sustained were:

- (1) "Did you ascertain what my client's underlying conviction was for prior to the parole search?";
- (2) "Did you call CDC or his parole agent prior to the search?";
- (3) "Did you call CDC or his parole agent to determine his known address prior to the search?";
- (4) "What criminal activity did you seek to uncover as a result of the parole search?"

At the conclusion of the preliminary hearing the magistrate denied the motion to suppress, finding that the police officers had in fact observed the appellant driving erratically, and that the officers did not conduct the parole search arbitrarily or with capriciousness or for the purpose of harassment.

Appellant moved to set aside the information (§ 995) on the basis that the magistrate had precluded him from fully litigating his motion to suppress by denying cross-examination. The motion was denied after hearing. On April 1, 2009, appellant entered his plea of guilty to the single felony weapons count pursuant to the negotiated disposition set forth above. On April 30, 2009, he was sentenced to the agreed upon term of 16 months in state prison.

A timely notice of appeal was filed. No certificate of probable cause (§ 1237.5) was requested, and the only issue raised is denial of the motion to suppress. (§ 1538.5, subd. (m).)

DISCUSSION

There are no issues on appeal relating to appellant's plea or sentence. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1097.) On the motion to suppress, the court's resolution of the factual inquiries is reviewed under the deferential substantial evidence standard. (*People v. Ramos* (2004) 34 Cal.4th 494, 505.) We review de novo the application of the law to those facts. (*Ibid.*) The magistrate found that the traffic stop and detention were supported by the testimony of the police officers and that finding is supported by substantial evidence.

It is undisputed that appellant was on parole at the time of the search of his residence, that he was subject to search without warrant, and that the officers were aware of the search condition. "Because of society's interest both in assuring the parolee corrects his behavior and in protecting its citizens against dangerous criminals, a search pursuant to a parole condition, without reasonable suspicion, does not 'intrude on a *reasonable* expectation of privacy, that is, an expectation that society is willing to recognize as legitimate.' [Citation.] [¶] . . . [¶] Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing." (*People v. Reyes* (1998) 19 Cal.4th 743, 751, 752.) The circumstances of appellant's detention and arrest (driving erratically late at night in a vehicle without license plates, lying about his identity, and then revealing his status as a felon on parole) confirm the magistrate's finding that the search was not arbitrary, capricious or harassing. Appellant does not show that the hour of the search was unreasonable given that the appellant was out on the street at the time.

The record fails to present any arguable issue that any of the four proposed cross-examination questions would have elicited relevant evidence on the validity of the search of his residence. Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."

(Evid. Code, § 210.) “The test of relevance is whether the evidence tends ‘ “logically, naturally, and by reasonable inference” to establish material facts. . . . [Citations.]’ [Citation.]” (*People v. Scheid* (1997) 16 Cal.4th 1, 13, last citation omission added; accord, *People v. Guerra* (2006) 37 Cal.4th 1067, 1117, disapproved in part on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) We review a trial court’s ruling on the admissibility of evidence for abuse of discretion. (*Guerra*, at p. 1113.) “Under this standard, a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. [Citation.]” (*Ibid.*) The nature of appellant’s felony convictions had no bearing on the validity of the search, and appellant was subject to search by any peace officer, not just his parole officer.⁴ Appellant himself verified his residence address, and no showing of good cause or reasonable suspicion for the search was required.

There is no arguable issue that the court abused its discretion in sustaining the prosecution objections to his counsel’s questions, or that the motion to suppress should have been granted.

⁴ Section 3067, subdivision (a) provides: “Any inmate who is eligible for release on parole pursuant to this chapter shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.”

DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Simons, Acting P. J.

Needham, J.